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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

San Diego Unified School District,

Plaintiff,

v.

T.B., a minor, Allison and Robert
Brenneise, his parents, Steven Wyner and
Wyner and Tiffany

Defendants.

Case No. 08 CV 0039 WQH WMc

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DISTRICT'S MOTION TO CONSOLIDATE
[FRCP Rule 42(a)]**

Trial: none set

I. INTRODUCTION

The San Diego Unified School District ("District") hereby moves to consolidate the above captioned case with *T.B., Allison Brenneise and Robert Brenneise v. San Diego Unified School District*, Case No. 08 CV 0028, both of which are currently pending before this Court and the Honorable Judge Hayes, based upon the Notice of Motion and Motion, this Memorandum of Points and Authorities in support of that motion, and the attached declaration of Sarah Sutherland.

II. MOTION TO CONSOLIDATE

San Diego Unified School District v. T.B. et. al., Case No. 08 CV 0039, should be consolidated with *Tyler Brenneise et. al. v. San Diego Unified School District*, Case No. 08 CV 0028, because the actions involve common questions of law and fact, and consolidation would

1 avoid the substantial danger of inconsistent adjudications involving the same parties and issues,
 2 avoid unnecessary duplication of effort by the parties and the Court, and prevent the presentation
 3 of duplicative evidence and argument. Fed.R.Civ.Pro. Rule 42(a); Declaration of S. Sutherland;
 4 see also generally, *United States EPA v. City of Green Forest, Ark.*, 921 F.2d 1394, 1402 (8th Cir.
 5 1990) (grant or denial of motion to consolidate is in trial court's discretion and will not be
 6 reversed absent clear error or exigent circumstances).

7 The cases should be consolidated because both cases involve the same parties and are
 8 based on the same or similar claims and events. Both parties seek review of the same underlying
 9 administrative proceeding, convened pursuant to the Individuals with Disabilities Education
 10 Improvement Act ("IDEA"), 20 U.S.C. sections 1400 *et seq.*, and adjudication of rights under the
 11 IDEA, including both parties' rights to fees incurred in the underlying due process hearing. More
 12 specifically, both cases pertain to the same student, same family, same school district, same school
 13 year, same counsel, and same offers of a free, appropriate public education. Thus, in furtherance
 14 of judicial economy and due process, the Court should consolidate both cases.

15 **III. CONCLUSION**

16 On this basis, the District respectfully requests this Court consolidate its action, 08 CV
 17 0039, with T.B.'s first filed pending action, 08 CV 0028, such that the issues will be litigated and
 18 decided concurrently.

20 DATED: February 26, 2008

MILLER BROWN & DANNIS

22
 23 By: /s/ Sarah L.W. Sutherland
 SARAH L. W. SUTHERLAND
 Attorneys for San Diego Unified School District

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: Symphony Towers, 750 B Street, Suite 2310, San Diego, CA 92101.

On the date set forth below I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DISTRICT'S MOTION TO CONSOLIDATE on interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Steven Wyner
Wyner & Tiffany
970 W. 190th Street, Suite 302
Torrance, CA 90502

☒ **(VIA U.S. MAIL)** I caused such document to be placed in the U.S. Mail at San Diego, California with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(VIA FACSIMILE)** I caused such document to be transmitted via facsimile to the addressee from the facsimile machine of Miller Brown & Dannis whose phone number is (619) 702-6202. The transmission by facsimile was reported as complete and without error

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee.

☐ **(VIA OVERNIGHT MAIL)** I caused such envelope to be deposited at an authorized "drop off" box on that same day with delivery fees fully provided for at Symphony Towers, 750 B Street, Suite 2310, San Diego, CA 92101, in the ordinary course of business.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made.

Executed on February 26, 2008 at San Diego, California.

Janice Karr
Type or Print Name

Signature